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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,545	02/25/2002	Sam L. Samuels	AD6799USNA	7978

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT PAPER NUMBER

1772

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/084,545

Applicant(s)

SAMUELS ET AL.

Examiner

Walter B. Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 32-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 32-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's Request for Reconsideration filed February 9, 2006 has been received and considered by Examiner.

REPEATED REJECTIONS

Claim Rejections - 35 USC § 103

2. The 35 U.S.C. 103 rejections of claims 1-17 and 32-35 that were repeated in paragraphs 3-7 of the previous Office Action mailed August 9, 2005 have been repeated for the reasons previously made of record.

3. The 35 U.S.C. 103 rejection of claims 36-38 made of record in paragraph 8 of the previous Office Action mailed August 9, 2005 have been repeated for the reasons previously made of record.

Response to Arguments

4. Applicant's arguments presented on pages 6-10 of the Request for Reconsideration filed February 9, 2006 regarding the 35 U.S.C. 103 rejections of record have been fully considered but are not persuasive.

Applicant argues on page 6 that "the basic principles under which the Cook and Fowler constructions were designed to operate are not the same". Applicant supports this argument by asserting, without support, that the Cook fabric "expands in both the longitudinal and circumferential directions to accommodate stresses in those directions generated by the balloon inflation". That the Cook fabric "expands in both the longitudinal and circumferential directions" is not taught or suggested by Cook. The teaching of Cook that "an increase in diameter [of the balloon] does not require a decrease in length of the balloon" at col. 3, lines 54-55 is plainly not

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a teaching that the length of the balloon increases with an increase in diameter of the balloon.

Cook explicitly states at col. 3, line 58 that “[b]alloon 12 is therefore of fixed length”. Therefore, since the Fowler construction, when expanded radially, “expands much less or not at all in the axial direction” (col. 4, lines 33-37), the basic principle under which the Cook and Fowler constructions were designed to operate are indeed the same.

Regarding Applicant’s argument that certain teachings in Cook and Fowler that are relied upon in the previous Office Action mailed August 9, 2005 “may not characterize the prior art catheter covers accurately or completely”, the assertion that the teachings are not accurate is unsupported (patent X teaches what patent X teaches), and it would not be expected that one statement in patent X would “completely” characterize the invention disclosed in patent X (nor is it clear how this argument addresses the rejection of record). Applicant’s arguments in the Request for Reconsideration ignore those certain teachings in Cook and Fowler that are relied upon in the previous Office Action mailed August 9, 2005 (by dismissing them by stating that they “may not characterize the prior art catheter covers accurately or completely”) and repeat the arguments made in the Amendment filed on June 24, 2005, which have been addressed in the previous Office Action mailed August 9, 2005.

Regarding Applicant’s discussion of the recall of a Boston Scientific stent system and the “ongoing” problem of this stent system, Applicant has not shown any relevance of this stent system to either Applicant’s balloon cover or to the prior art of record. Applicant has provided no comparison between the balloon of the Boston Scientific stent system and Applicant’s balloon cover. Applicant makes no mention of a balloon cover as a component of the Boston Scientific stent system at all. Applicant provides no basis whatsoever for comparison between the Boston

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Scientific stent system and the Applicant's balloon cover. The information regarding the Boston Scientific stent system provided by Applicant is therefore not relevant to the 35 U.S.C. 103 rejection of record.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

04/10/06

WBA


ALICIA CHEVALIER
PRIMARY EXAMINER